

**ASSEMBLY BILL**

**No. 1488**

**Introduced by Assembly Member Bates**

February 21, 2003

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An act to amend Section 1270.1 of the Penal Code, relating to domestic violence protective orders.

LEGISLATIVE COUNSEL'S DIGEST

AB 1488, as introduced, Bates. Domestic violence protective orders.

Existing law provides that before any person who has been arrested for commission of certain specified crimes is released on bail in an amount other than that specified in the schedule of bail for the offense or, is released on his or her own recognizance, a hearing shall be held at which the court shall consider certain enumerated factors including the potential danger the detained person poses to other persons. If the judge or magistrate sets bail in an amount other than that specified in the schedule of bail for the offense, he or she shall state his or her reasons for doing so in the record.

This bill would add violation of a domestic violence protective order if the detained person made threats to kill, engaged in violence against, or visited the residence or workplace, of the protected party to the list of crimes, the commission of which require that a hearing must be held before release on bail in an amount other than that specified in the schedule of bail for the offense or on one's own recognizance.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1270.1 of the Penal Code is amended to read:

1270.1. (a) Before any person who is arrested for any of the following crimes may be released on bail in an amount that is either more or less than the amount contained in the schedule of bail for the offense, or may be released on his or her own recognizance, a hearing shall be held in open court before the magistrate or judge:

(1) A serious felony, as defined in subdivision (c) of Section 1192.7, or a violent felony, as defined in subdivision (c) of Section 667.5, but not including a violation of subdivision (a) of Section 460 (residential burglary).

(2) A violation of Section 136.1 where punishment is imposed pursuant to subdivision (c) of Section 136.1, 262, 273.5, 422 where the offense is punished as a felony, or 646.9.

(3) A violation of paragraph (1) of subdivision (e) of Section 243.

(4) *A violation of a domestic violence protection order issued pursuant to Section 136.2 if the detained person made threats to kill, has engaged in violence against, or has gone to the residence or workplace of, the protected party.*

(b) The prosecuting attorney and defense attorney shall be given a two court-day written notice and an opportunity to be heard on the matter. If the detained person does not have counsel, the court shall appoint counsel for purposes of this section only. The hearing required by this section shall be held within the time period prescribed in Section 825.

(c) At the hearing, the court shall consider evidence of past court appearances of the detained person, the maximum potential sentence that could be imposed, and the danger that may be posed to other persons if the detained person is released. In making the determination whether to release the detained person on his or her own recognizance, the court shall consider the potential danger to other persons, including threats that have been made by the detained person and any past acts of violence. The court shall also consider any evidence offered by the detained person regarding his or her ties to the community and his or her ability to post bond.

(d) If the judge or magistrate sets the bail in an amount that is either more or less than the amount contained in the schedule of

1 bail for the offense, the judge or magistrate shall state the reasons  
2 for that decision and shall address the issue of threats made against  
3 the victim or witness, if they were made, in the record. This  
4 statement shall be included in the record.

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